

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5291 of 1996

with

SPECIAL CIVIL APPLICATION No 7920 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

SHANTARAM NARAYAN GORE

Versus

DIVISIONAL CONTROLLER

Appearance:

Spl.C.A.No.5291/96:

MR NS SHETH for Petitioner

MR YS LAKHANI for Respondents

Spl.C.A.No.7920/96:

MR YS LAKHANI for the petitioners

MR NS SHETH for the respondent.

CORAM : MR.JUSTICE J.N.BHATT

Date of decision: 20/12/96

ORAL JUDGEMENT

Both these petitions arise out of a common award between

the same parties. Therefore, upon joint request, both the petitions are being disposed of by this common judgment.

Special Civil Application No.5291 of 1996 (hereinafter referred to as the first petition) is filed by the workman who was working as a driver with the respondent Gujarat State Road Transport Corporation. Special Civil Application No.7920 of 1996, which is hereinafter referred to as the second petition, is filed by the employer Corporation.

The workman was visited with an order of dismissal from service after holding domestic inquiry against him on the charge of misconduct committed by him on 25.11.93. According to the case of the employer, it was a day on which Ashwa Megh Yagna was held at Vadodara. The Controller of the employer Corporation requested the workman-driver to take the trip of the bus from Water Tank, Ajva Road to Station on account of heavy traffic and hectic road activities on account of Ashwa Megh Yagna. The workman-driver without following the direction, as instructed, left the bus near Water Tank bus stop unattended and without informing and because of such a misconduct, many other subsequent trips also came to be cancelled resulting into pecuniary loss to the Corporation and inconvenience caused to the members of the public.

The workman challenged his dismissal dated 23.2.94 by raising industrial dispute which was referred to the Labour Court under Reference No.827/94. The Labour Court quashed the order of dismissal and modified the order of the employer to that of discharge simpliciter. The Labour Court also directed the employer Corporation to pay gratuity, provident fund and other incidental benefits and also to pay an amount of Rs.5,000/- in consideration of the remaining period of service. Being aggrieved by the said award recorded by the Labour Court, the workman has challenged the same by filing the first petition and the employer has challenged the same by filing the second petition.

The following facts which are no longer in controversy may be narrated at first.

- (1) The age of the workman driver was 56 at the time of recording of dismissal order in the departmental inquiry.
- (2) There were serious acts of misconduct in the past

committed by the workman.

(3) The workman-driver came to be dismissed from service in 1988.

(4) The Labour Court found that the departmental inquiry was properly conducted and the delinquency charged against the workman was rightly held proved.

After having examined the facts and circumstances emerging from the record of the present case, including the aforesaid admitted aspects and the exercise of discretionary power under the provisions of section 11-A of the Industrial Disputes Act, 1947 (ID Act), this Court is not inclined to interfere with the impugned award.

The learned advocate appearing for the employer Corporation, however, forcefully contended that the order of payment of Rs.5,000/- by way of compensation to the workman is not only harsh, but is illegal. Learned advocate Mr Seth while appearing for the workman has countenanced this contention and has further submitted that the amount of Rs.5,000/- was paid to the workman during the pendency of the petition by the employer and the workman has spent the said amount towards the marriage expenses incurred by him for his daughter. In this context, it was submitted that any order of refund would operate as a great hardship not only to the workman but to the members of his family as well. Although, in the facts and circumstances the amount of Rs.5,000/could be ordered to be refunded, in the light of the above facts, this Court is not inclined to disturb that part of the impugned order. The impugned award, otherwise, is found balanced, reasoned and based on proper appreciation of facts and circumstances of the case.

In the result, both the petitions are dismissed. Rule discharged. The amount of Rs.2,000/- deposited in the second petition pursuant to the order of this Court shall be paid to the workman-driver on due verification of the identity by the office.

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